

aa<sup>83</sup> is G or R.

### **REMARKS**

Reconsideration is respectfully requested in light of the foregoing amendments and remarks which follow.

Claims 2-4, 12, 13, and 15-21 are before the Examiner. Claim 1 has been rewritten as claim 27, addressing points raised in the Official Action. The claims, depending on claim 1, were rewritten to depend on claim 27 and also to refer to the "compound" as a -peptide-. The changes to claim 15 result from the dropping of the  $\alpha$ ,  $\beta$  designations. The cancellation of claims 5-8 results from the failure to include the (a), (b) designators in claim 27. Claim 27 employs formula (I) and (II) to cover the subject peptides of the invention. It is hoped with their use that the points of distinction will be more readily seen and that the application will be passed to issue. The amendments to the claims are believed to contain no new matter.

### **Sequence Listing**

The requested new sequence listing will be submitted shortly.

### **Rejections under 35 USC 112**

Claims 1-8, 12, 13, 15-17, 20 and 21 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The points raised by the Examiner in the Official Action have been considered in redrafting claim 1 as new claim 27.

### **Rejections under 35 USC 103**

Claims 1-8, 12, 13, 15-17, 20 and 21 stand rejected under 35 USC 103(a) as being unpatentable over Olsson, U.S. Patent No. 5,073,540 or WO 88/05784 for the reasons of record in Paper No. 29, mailed August 16, 1999. Applicants respectfully traverse.

It is respectfully submitted that the teachings provided in either fail to suggest the peptides as now claimed. It is thought that the rejection was in part motivated by the breadth of

the claims, as perceived by the Examiner, and not a teachings that would be suggestive of the peptide dimer family and their disclosed properties.

Illustrative species are shown in Table 1 on page 21 of the specification. The activities of ordered and inverted dimers are discussed, e.g. B2702.75-84/75-84 and B2702.84-75/75-84 (see page 22 starting at line 5). Criticality of amino acid positions in the context of substitutions in the dimers and the nature of the amino acid being substituted are also discussed in terms of activity enhancement, loss and maintenance. See for example on page 24 starting at line 15.

Claim 27 is more clearly drawn to structure that are envisioned as being active and are akin to those of B2702.75-84/75-84 and B2702.84-75/75-84, allowing for taught permissible amino acid substitutions. Positions 77, 81 and 84 are more open to substitutions without an expected loss of activity. Please note that claims 15, 16 and 17 are directed to specific structures.

It is respectfully submitted that each of the references provides insufficient guidance in terms of the changes required to arrive at the claimed structures. Further, there is an absence of motivation to make the changes required. First, the claimed structures are dimers. There is no mention of a dimeric structure. There is no mention as to how the "monomers" are to be arranged, e.g. in order or inverted. There is no mention in the context of a dimeric structure as to what positions would be open to substitution or not and with what. Such selections are disclosed as being critical to maintenance, enhancement and loss of activity.

It is respectfully submitted that the prior art fails to establish a proper prima facie case of obviousness. Withdrawal of the rejection is respectfully requested.

Further, it is thought the present claims are commensurate in scope with the showings provided. The current claims scope should be considered in the context of the structures exemplified as having the activity and the permissible additions, substitutions and deletions indicated as not being expected to impact the activity shown.

Withdrawal of the rejection is respectfully requested.

## **Conclusion**


Having addressed all the rejections and objections, the application is believed to be in condition for allowance. A notice to that effect is respectfully requested.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 286002020023. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Dated: February 5, 2001

By:

  
Thomas G. Wiseman  
Registration No. 35,046

Morrison & Foerster<sup>LLP</sup>  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-1888  
Telephone: (202) 887-1678  
Facsimile: (202) 887-0763